

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHICAGO MERCANTILE EXCHANGE INC.,)	Docket No. 18 C 1376
Plaintiff,)	
vs.)	
ICE CLEAR US, INC., et al.,)	Chicago, Illinois
Defendants.)	August 7, 2020
)	10:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPEARANCES:

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1 (The following proceedings were had telephonically:)

2 THE CLERK: Case 18 C 1376, Chicago Mercantile
3 Exchange v. ICE Clear.

4 THE COURT: Let's start off with the attorney for the
5 plaintiff, giving the names of everybody who is on for the
6 plaintiff.

7 MR. KUCALA: Good morning, your Honor. This is Joe
8 Kucala on behalf of the plaintiff, along with Joe Norvell and
9 Tom Monagan, also from Norvell IP, and Matthew Kelly on behalf
10 of CME.

11 THE COURT: All right. And somebody can give me the
12 names of the folks that are on for the defendant --
13 defendants. Excuse me.

14 Maybe we don't have them yet. Is anybody on for the
15 defendants in CME v. ICE?

16 MS. DURHAM: Your Honor, good morning. Sorry. I was
17 on mute. This is Gina Durham from DLA Piper on behalf of the
18 ICE defendants. With me from DLA is Paul Taufer and Josh
19 Schwartzman, and we also have Andy Richman from ICE.

20 THE COURT: All right. So I read what everybody gave
21 me. And if I'm understanding it correctly -- and please
22 correct me if I'm wrong; I just want to make sure I'm
23 understanding what you're saying -- if I end up making a
24 ruling that there is no right to a jury trial on the
25 disgorgement remedy, then this is going to end up as a bench

1 trial. If I end up ruling that there is a right to a jury
2 trial on the disgorgement remedy, then this is going to end up
3 as a jury trial -- at least partly as a jury trial except for
4 the injunction claim. Am I understanding that right?

5 MR. KUCALA: Your Honor --

6 THE COURT: Go ahead.

7 MR. KUCALA: Yes, your Honor. If you rule that the
8 disgorgement is a jury issue, CME will like to keep --

9 THE COURT: The jury.

10 MR. KUCALA: -- the jury demand.

11 Otherwise, we would forego the right to a jury and
12 proceed with a bench trial on August 31st.

13 THE COURT: All right. And defense side, did they
14 state it correctly?

15 MS. DURHAM: That's correct, your Honor.

16 THE COURT: Okay. So I -- and I appreciate that, you
17 know, CME wants to file something on that, but it's going to
18 have to be done quicker than what you're talking about. And
19 here's why. Because as of right now, we still got this
20 August 31st date, and if there -- and I haven't moved it yet,
21 and I haven't said I'm going to move it. And so as of right
22 now, you're set for a jury trial on August the 31st. And
23 given the restrictions that exist for travel and whatnot, if
24 people were to decide that, okay, we got to get in here in
25 enough time to -- so the mayor of the City of Chicago isn't

1 going to have us arrested for showing up in court, you know,
2 less than 14 days after we came into town, this has to be
3 decided very promptly by me. And that doesn't mean 14 days
4 and one hour before the trial starts; that means really
5 Monday.

6 And, you know, it's not my desire to tell people you
7 got to work on the weekend, but you probably do anyway, and
8 this is kind of part of the territory when you become a
9 litigating lawyer.

10 So the issues on this are pretty well defined. I
11 don't think we need a back and forth. It's simultaneous
12 briefs. And I'll give you two choices, and neither one of
13 them are good. I know which one I'd take, but it's not me
14 writing the stuff.

15 So choice one is 5:00 o'clock on Saturday, and choice
16 two is noon on Sunday.

17 So pick your poison. Mr. Kucala, you first. And
18 it's going to be the same for both sides. I just want to hear
19 what both sides have to say.

20 MR. KUCALA: Yeah. Well, we would go with 12:00 p.m.
21 on Sunday.

22 THE COURT: That's what I thought you'd say. Nobody
23 is like me.

24 Okay. On the defense side?

25 MS. DURHAM: Your Honor, we agree that this should be

1 decided as quickly as possible, and we could go with the
2 Saturday time.

3 THE COURT: Okay. So we're going to do Sunday. But
4 you can file it early if you want. There is no rule that says
5 that a brief that's due on -- you know, at 12:00 o'clock on a
6 particular day has to be filed at 11:59 and 58 seconds. You
7 can file it on Saturday if you want.

8 So both parties -- here is what the order is going to
9 say. Each side is directed to file a submission regarding the
10 right to a jury trial on the remedy of disgorgement -- and,
11 Melissa, if you want to send that language by me before you
12 enter it, that's fine -- by no later than 12:00 p.m. Central
13 Time on Sunday.

14 Then we are going to have another phone call on
15 Monday, and I just -- this is the tricky part for me because I
16 have to wedge you in a bunch of other stuff. So give me just
17 a second here.

18 I am going to set it for 9:45 on Monday the 10th
19 using the same call-in number. We'll just call it a status
20 hearing.

21 I think I maybe had one other question, but maybe
22 not. Give me just a second. I was furiously writing notes on
23 this thing as I went through it.

24 No, I guess not. I may be confusing you with another
25 case.

1 No, that's it. That's all I had.

2 Anybody want to ask me anything or tell me anything
3 before we get off the phone?

4 MS. DURHAM: Your Honor, this is Gina Durham on
5 behalf of defendant. We had raised in our submission
6 yesterday a request to brief our motion on continuance. Will
7 your Honor --

8 THE COURT: You know what? I got to tell you. There
9 is a saying that a lawyer once said to me is that paper
10 doesn't refuse ink. You don't have to have leave to file a
11 motion for continuance, okay?

12 And you've known what the trial date is. Everybody's
13 known since, you know, X that there's been a pandemic. You've
14 known for X number of weeks, I said some of this yesterday,
15 that there's travel restrictions. You don't need leave to
16 file a motion for a continuance. You should file it -- you
17 should have filed it before -- you've made the argument
18 repeatedly in various status reports and other documents.

19 And so, yeah, I mean, what can I tell you? You don't
20 need leave to file that motion.

21 MS. DURHAM: Okay. Thank you, your Honor. We will
22 get that on file. I'm sorry that we haven't gotten that
23 before. There's just been a lot of issues --

24 THE COURT: I don't need your apologies, okay?
25 So take care. Have a good day.

1 MS. DURHAM: Thank you.

2 Mr. Kucala, did you have anything you wanted to bring
3 up with me?

4 MR. KUCALA: Yes, one question, your Honor. If we
5 were to proceed with a full bench trial, would that be
6 proceeding on August 31st?

7 THE COURT: That's what we are going to talk about on
8 Monday.

9 MR. KUCALA: Okay. Fair enough. Thank you, your
10 Honor. Bye.

11 (Which were all the proceedings had in the above-entitled
12 cause on the day and date aforesaid.)

13 I certify that the foregoing is a correct transcript from
14 the record of proceedings in the above-entitled matter.

15 Carolyn R. Cox Date
16 Official Court Reporter
17 Northern District of Illinois
18 /s/Carolyn R. Cox, CSR, RPR, CRR, FCRR
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